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## 6.1 Family Division Options When Complaint or Petition Is Filed

The Family Division has several options when a complaint is made or a petition (including a citation or appearance ticket for non-felony offenses) is filed in a delinquency proceeding.\* MCL 712A.11(1)–(2); MSA 27.3178(598.11)(1)–(2), and MCR 5.931(C). MCR 5.932(A)(1)–(5) (preliminary inquiries) and MCR 5.935(B)(3) (preliminary hearings) allow the judge or referee to choose from five different courses of action at a preliminary inquiry or preliminary hearing. The court may:

- F deny authorization of the petition or dismiss the petition;
- F refer the matter to a public or private agency pursuant to the Juvenile Diversion Act;\*
- F direct that the parent and juvenile appear so that the matter can be handled through further informal inquiry;
- F proceed on the consent calendar;\* or
- F proceed on the formal calendar.\*

\*See Forms JC 01 (complaint) and 04 (petition).

\*See Section 6.3.

\*See Section 6.4.

\*See Section 6.5.

## 6.2 Preliminary Inquiries

Where a person gives information to the court that a juvenile is a “status offender” or “wayward minor,”\* or where the prosecuting attorney files a delinquency petition without requesting detention, the Family Division has the authority to conduct a preliminary inquiry to determine whether formal or informal procedures should be used, or whether any action at all is warranted. MCL 712A.11(1); MSA 27.3178(598.11)(1), and MCR 5.932(A).

\*See Sections 2.3 (definition of “status offender”) and 2.4 (definition of “wayward minor”).

Under MCL 712A.2(e); MSA 27.3178(598.2)(e), the Family Division has the authority to establish or assist in developing a program or programs within the county to prevent delinquency and provide services to act upon reports submitted to the court relative to juveniles who do not require formal court jurisdiction but otherwise fall within the jurisdictional requirements of MCL 712A.2(a); MSA 27.3178(598.2)(a). Such services can be used only

if they are voluntarily accepted by the juvenile and his or her parents, guardian, or custodian.

The requirements of the Juvenile Diversion Act must be complied with if the court utilizes informal procedures. MCL 712A.11(7); MSA 27.3178(598.11)(7).

## 6.3 Juvenile Diversion Act

### A. Purpose

The purpose of the Juvenile Diversion Act is to permit certain minors to be diverted from the court system having jurisdiction over minors, to establish procedures for diversion from formal court procedures, and to require that certain records be kept in connection with diversion. The recordkeeping requirements help ensure that diversion procedures are not abused by the juveniles taking part in them. House Legislative Analysis, HB 4597, December 10, 1987. A juvenile who does not comply with the terms of a diversion agreement may be subject to court jurisdiction. MCL 722.825(5); MSA 25.243(55)(5).

For purposes of the act, a minor is an individual less than 17 years of age. MCL 722.822(e); MSA 25.243(52)(e).

### B. Procedure

“Diversion” is defined as the placement that occurs when a formally recorded apprehension is made by a law enforcement agency for an act by a minor which, if a petition were filed with the court, would bring the minor within the formal jurisdiction of the court under MCL 712A.2(a); MSA 27.3178(598.2)(a). MCL 722.822(c); MSA 25.243(52). Instead of a petition being filed or authorized, however, either of the following occurs:

- F the minor is released into the custody of his or her parent, guardian, or custodian and the investigation is discontinued, or
- F the minor and the minor’s parent, guardian, or custodian agree to work with a person or public or private organization or agency that will assist the minor and the minor’s family in resolving the problem that initiated the investigation.

MCL 722.822(c)(i)–(ii); MSA 25.243(52)(c)(i)–(ii), and MCL 722.823(1)(a)–(b); MSA 25.243(53)(1)(a)–(b).

**NOTE:** In some cases, there may be no “formally recorded apprehension” of the juvenile prior to diversion.

The Juvenile Diversion Act may be used by law enforcement officials and court intake workers prior to the filing of a petition or before the court authorizes the petition. MCL 722.823(1); MSA 25.243(53)(1), MCR 5.932(A)(2), and MCR 5.935(B)(3). However, once the petition is authorized, the act may no longer be used: the case must be placed on either the consent calendar or the formal calendar.

### C. Offenses Precluding Use of Diversion

Juveniles accused of or charged with any of the following “assaultive offenses” shall not be diverted:

- F felonious assault, violation in weapon-free school zone, MCL 750.82; MSA 28.277;
- F assault with intent to murder, MCL 750.83; MSA 28.278;
- F assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279;
- F assault with intent to maim, MCL 750.86; MSA 28.281;
- F assault with intent to commit a felony, MCL 750.87; MSA 28.282;
- F assault with intent to rob while unarmed, MCL 750.88; MSA 28.283;
- F assault with intent to rob while armed, MCL 750.89; MSA 28.284;
- F first-degree murder, MCL 750.316; MSA 28.548;
- F second-degree murder, MCL 750.317; MSA 28.549;
- F manslaughter, MCL 750.321; MSA 28.553;
- F kidnapping, MCL 750.349; MSA 28.581;
- F prisoner taking another prisoner as hostage, MCL 750.349a; MSA 28.581(1);
- F kidnapping, child under 14, MCL 750.350; MSA 28.582;
- F mayhem, MCL 750.397; MSA 28.629;
- F first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2);
- F second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3);
- F third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4);
- F fourth-degree criminal sexual conduct, MCL 750.520e; MSA 28.788(5);
- F assault with intent to commit criminal sexual conduct, MCL 750.520g; MSA 28.788(7);
- F armed robbery, MCL 750.529; MSA 28.797;

F carjacking, MCL 750.529a; MSA 28.797(a); and

F unarmed robbery, MCL 750.530; MSA 28.798.

MCL 722.823(3); MSA 25.243(53)(3), and MCL 722.822(a); MSA 25.243(52)(a).

#### D. Factors to Determine Whether to Divert Juvenile

Before a minor is diverted, all of the following factors must be evaluated:

(a) the nature of the alleged offense;

(b) the minor's age;

(c) the nature of the problem that led to the alleged offense;

(d) the minor's character and conduct;

(e) the minor's behavior in school, family, and group settings; and

(f) any prior diversion decisions made concerning the minor and the nature of the minor's compliance with the diversion agreement.

MCL 722.824(a)–(f); MSA 25.243(54)(a)–(f).

#### E. Victim's Opportunity to Be Heard Regarding Diversion

\*See Section 7.19 for the applicability of Juvenile Crime Victim's Rights Act.

The Juvenile Crime Victim's Rights Act requires the court to provide the victim an opportunity to be heard regarding placement before the court places a juvenile in a pretrial diversion program for committing a violation that would be a crime or a serious misdemeanor if committed by an adult. The victim has the right to make a statement at the hearing, submit a written statement, or both. MCL 780.786(4); MSA 28.1287(786)(4).\*

**NOTE:** The victim may not be given the opportunity to be heard concerning diversion if the court intake worker diverts the juvenile following the preliminary inquiry, as MCL 780.786(4); MSA 28.1287(786)(4), explicitly mentions a hearing.

## F. Diversion Conference

If the decision is made to divert the minor with a referral to a person or private or public organization or agency, a conference must first be held with the minor and the minor's parent, guardian, or custodian to consider alternatives to the filing of a petition with the court or to the authorization of a petition. MCL 722.825(1); MSA 25.243(55)(1).<sup>\*</sup> The law enforcement official or court intake worker — depending upon who is holding the conference — must notify the minor and the minor's parent, guardian, or custodian of the time and place of the proposed conference and:

- (a) that participation in the conference or resulting referral plan is voluntary;
- (b) that an attorney may accompany the minor and the minor's parent, guardian, or custodian at the conference;
- (c) of the alternative referral programs available and the criteria utilized to determine whether to file a petition with the court or to dispose of the petition with a referral; and
- (d) that if diversion is agreed to, and the minor complies with the terms of the diversion agreement and referral plan, a petition cannot be filed with the court, or, if a petition has been filed, the petition cannot be authorized.<sup>\*</sup>

MCL 722.825(1)(a)–(d); MSA 25.243(55)(1)(a)–(d).

This conference may not be held until after the questioning, if any, of the minor has been completed or after an investigation has been made concerning the alleged offense. Mention of, or promises concerning, diversion shall not be made by a law enforcement official or court intake worker in the presence of the minor or the minor's parent, guardian, or custodian during any questioning of the minor. Information divulged by the minor during the conference or after the diversion is agreed to, but before a petition is filed with or authorized by the court, cannot be used against the minor. MCL 722.825(2); MSA 25.243(55)(2).

## G. Diversion Agreement

If a diversion agreement is reached that imposes conditions on the minor, the terms of the agreement must be set forth in writing, dated, and signed by the law enforcement official or court intake worker, the minor, and the minor's parent, guardian, or custodian. MCL 722.825(3); MSA 25.243(55)(3).<sup>\*</sup>

If a conference is held but an agreement is not reached, a petition may be filed with the court as provided by law and a petition may be authorized as provided by law. If the law enforcement official or court intake worker decides to file a petition, it must be filed no later than 30 days after the conference. MCL 722.825(4); MSA 25.243(55)(4).

<sup>\*</sup>See Form JC 56.

<sup>\*</sup>Note that Form JC 56 does not reflect this statutory provision.

<sup>\*</sup>See Form JC 55. Note that this form does not reflect the agreement but is used to document that a minor was diverted for an offense.

## H. Revocation of Agreement

If the minor complies with the terms of the diversion agreement and the referral plan, a petition cannot be filed with the court, or if a petition has been filed, the petition cannot be authorized by the court. MCL 722.825(1)(d); MSA 25.243(55)(1)(d).

However, if the minor fails to comply with the terms of the diversion agreement and the referral plan, the law enforcement official or court intake worker may revoke the diversion agreement. If the diversion agreement is revoked, a petition may be filed with the court as provided by law and a petition may be authorized by the court as provided by law. MCL 722.825(5); MSA 25.243(55)(5).

## I. Required Information

\*See Form JC 55.

Whenever a law enforcement official or court intake worker diverts a minor, the following information must be filed with the Family Division in the county in which the minor resides or is found:\*

- (a) the minor's name, address, and date of birth;
- (b) the act or offense for which the minor was apprehended;
- (c) the date and place of the act or offense for which the minor was apprehended;
- (d) the diversion decision made, whether referred or released; and
- (e) the nature of the minor's compliance with the diversion agreement.

MCL 722.826(1)(a)–(e); MSA 25.243(56)(1)(a)–(e).

If a diversion agreement is revoked, the law enforcement official or court intake worker must file with the court in which the information described above is filed the fact of and reasons for the revocation. MCL 722.826(2); MSA 25.243(56)(2).

## J. Confidentiality and Destruction of Required Information

The Family Division must keep diversion information in a separate confidential record. MCL 722.827; MSA 25.243(57). This record is open to law enforcement agencies and court intake workers and, by order of the court, to persons having a legitimate interest, but only for the purpose of deciding whether to divert a minor. MCL 722.828(1)–(2), 722.829(1); MSA 25.243(58)(1)–(2), 25.243(59)(1). These records must be destroyed within 28 days after the minor becomes 17 years of age. MCL 722.828(3); MSA 25.243(58)(3).

## 6.4 Consent Calendar

A case may be placed on the consent calendar if, after a preliminary inquiry or preliminary hearing, the court authorizes the filing of a petition. The consent calendar provides a juvenile and his or her parents a means to consent to the jurisdiction of the Family Division. In exchange, the court is limited in the disposition it may order. Thus, if the case is placed on the consent calendar, there will be no trial.\*

\*Some courts require the juvenile to enter a plea of admission. See Chapter 10 (pleas in delinquency cases).

### A. Procedure

MCR 5.932(B) states that if it appears that protective and supportive action by the court will serve the best interests of the juvenile and the public, the court may, on authorizing the filing of a petition or on receipt of a citation or appearance ticket, and with the consent of juvenile and parent, proceed informally to hear the matter on the consent calendar. See also MCR 5.935(B)(3) (assignment of case to consent calendar during preliminary hearing)\* and MCR 5.931(C) (use of citation or appearance ticket instead of petition). Formal notice is not required. MCR 5.932(B)(1).

\*See Section 7.14(C) (decision to continue with preliminary hearing).

### B. Limited Disposition

If, after hearing, the court finds the accusation is true, it may dispose of the matter pursuant to MCL 712A.18; MSA 27.3178(598.18), except that the juvenile may not be removed from the custody of his or her parent. MCR 5.932(B)(2).\*

\*See Chapter 12, Part II (dispositional options).

If the court finds that the juvenile has violated the the Michigan Vehicle Code, MCL 257.1 et seq.; MSA 9.1801 et seq., the court must fulfill the reporting requirements of MCL 712A.2b(d); MSA 27.3178(598.2b)(d), and MCL 257.732; MSA 9.2432. MCR 5.932(B)(2).\* See *In re Neubeck*, 223 Mich App 568, 573–75 (1997).

\*See Section 12.23 (notice of disposition to Secretary of State).

### C. Waiver of Rights

By agreeing to placement of the case on the consent calendar, the parties waive these rights:

- F formal notice of charges;
- F the right to an attorney;
- F the right to an appointment of an attorney at public expense;
- F the right to jury trial;
- F the right to a trial before a judge;
- F the presumption of innocence;
- F the presentation of proof beyond a reasonable doubt;
- F the right to testify on the juvenile's own behalf;

- F the privilege against self-incrimination (and the right to remain silent);
- F the right to present witnesses;
- F the right to confront and cross-examine the juvenile's accusers; and
- F the right to use the subpoena power of the court to compel attendance of witnesses.

See MCR 5.932(B)(1), 5.935(B)(4)(a)–(c), and 5.942(C), for a list of rights of a juvenile when his or her case is placed on the formal calendar.

#### **D. Transfer of Case to Formal Calendar**

\*See Form JC 15.

MCR 5.932(B)(3) permits the court to transfer the case to the formal calendar if the juvenile fails to appear or violates conditions of the disposition ordered while the case was on the consent calendar.\* If the case is transferred to the formal calendar, the court must inform the juvenile of his or her right to an attorney, to trial by judge or jury, and that any statement made by the juvenile may be used against him or her. See *In re Chapel*, 134 Mich App 308, 312–13 (1984) (full panoply of rights under court rules vests when case is placed on formal calendar). However, any statements made by the juvenile during informal proceedings may not be used at a trial on the formal calendar that is based on the same charge. MCR 5.932(B)(3).

### **6.5 Formal Calendar**

MCR 5.903(A)(6) defines formal calendar as the judicial phases other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing of a delinquency proceeding.

The court may authorize a petition to be filed and docketed on the formal calendar if it appears that formal court action is in the best interest of the parties and the public. MCR 5.932(C). The court shall not authorize a delinquency petition, however, unless the prosecuting attorney has approved submitting the petition to the court. MCR 5.932(C), and MCL 712A.11(2); MSA 27.3178(598.11)(2).